

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E. V. BERLIN • BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E. V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E. V. BERLIN-BONN • VERBAND DEUTSCHER HYPOTHEKENBANKEN E. V. BERLIN

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Committee of European Securities Regulators
Mr. Fabrice Demarigny
Secretary General
11-13 avenue de Friedland

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France

Mandate for the Expert Group on Investment Management (CESR/04/160) **Response of the Zentraler Kreditausschuss** **KAGG**

Dear Mr. Demarigny,

We — i.e. the Zentraler Kreditausschuss being the joint committee operated by the central associations of the German banking industry; these associations are the *Bundesverband der deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Hypothekenbanken (VdH)*, for the mortgage banks; collectively, we represent more than 2,500 banks — would like to thank you for the opportunity to comment on CESR's mandate for its expert group on investment management. We emphatically welcome that the CESR-Expert Group is to be interested mainly with matters concerning UCITS and that CESR acknowledges the **distinction** which is to be made **between UCITS and non-UCITS related asset management** activities, as both constitute two separate fields which are in need of a separate supervisory treatment.

As far as the current mandate for the expert group on investment management is concerned, we primarily would like to stress the fact that CESR — save as regards the clarification of definitions (Article 53a UCITS Directive) — does not have any political mandate to create binding and uniform supervisory rules for the field of collective investment management. Especially regarding the **areas of work by the end of 2005**, the results to be reached on the level 2 mandate under the FIM Directive should be thoroughly checked as to whether there is a need for special guidelines on level 3 in the area of investment management. After all, the **conduct of business rules** to be implemented on the level 2 mandate under the FIM Directive apply to the collective investment management. We cannot conceive of any reason for a different approach in the field of collective investment management as opposed to investment services in general. The guidelines to be set up on level 3 should rather be the same for all investment services, unless a need for a special treatment of collective investment management on level 3 under the FIM Directive is shown to be inevitable.

However, the mandate CESR received by the Commission regarding rules on **outsourcing** to be implemented on level 2 under the FIM Directive does not cover the field of collective investment management. Furthermore, the UCITS Directive does not provide either the Commission or CESR with a mandate to set up guidelines or rules on outsourcing. On the contrary, the Commission has been instructed to inform Council and Parliament by February 2005 on the status of the implementation of the UCITS Directive within the various Member States. Only then the political institutions will decide whether or not there is a need for further regulatory action towards a maximum degree of harmonisation in this area. We feel CESR should not pre-empt this political process e.g. by setting up a premature self-regulation.

With regard to **the areas of work with urgent priority**, the German banking industry does not identify as problematic the issues enumerated under the heading “transitional provisions”. In particular, the contents of the simplified prospectus have been exhaustively dealt with in the UCITS Directive, wherefore supervisory guidelines are not considered necessary. In any case, we feel that CESR’s guidelines should only provide assistance to Member States which are in need for it.

As the aim of CESR — regardless to its role in the Lamfalussy process — is to ensure pan-European security and predictability of the supervisory approach of the Member States, we suggest that CESR, and especially its expert group on investment management, focuses on the issues identified by the national securities regulators as problematic with regard to their current practical experience.

You would oblige us very much by taking our comments into consideration when deciding about the concrete issues to be tackled by the expert group on investment management.

In case of any queries, please do not hesitate to contact Dr. Carsten Nickel-Welly (carsten.nickel-welly@dsgv.de, phone: ++49/30/20225-370).

Yours faithfully

On behalf of the Zentraler Kreditausschuss

German Savings Banks Association

(Deutscher Sparkassen- und Giroverband)

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Dr. Hartmut Frings